APPENDIX B

1. Constitutional and Statutory Provisions Involved

a. United States Constitution, Article IV, Section 2, Clause 1:

> "Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

b. United States Constitution, Article VI, Clause 2:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

c. Fourteenth Amendment to the United States Constitution, Section 1:

> "* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

d. Oregon Admission Act, Act of [Congress of] February 14, 1859, Section 4, 11 Stat. 383:

> "Sec. 4. And be it further enacted, that the following propositions be, and the same are hereby, offered to the said people of Oregon for their free acceptance or rejection, which, if accepted, shall be obligatory on the United States and upon the said State of Oregon, to-wit: * * * Provided, That the foregoing propositions, hereinbefore offered, are on

the condition that the people of Oregon shall provide by an ordinance, irrevocable without the consent of the United States, * * * that in no case shall non-resident proprietors be taxed higher than residents."

e. Oregon Constitution, Article I, Section 20:

"Section 20. No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens."

f. Act of June 3, 1859, Section 1, [Oregon] First Extra Session, 29; Deady's Laws, 1866, 132; Vol. 5, p. 1169, Oregon Revised Statutes:

"Section 1. Be it enacted by the Legislative Assembly of the State of Oregon, That the six propositions offered to the people of Oregon in the above-recited portion of the act of Congress aforesaid, be, and each and all of them are hereby accepted; and for the purpose of complying with each and all of said propositions hereinbefore recited, the following ordinance is declared to be irrevocable without the consent of the United States, to wit:

Be it ordained by the Legislative Assembly of the State of Oregon, * * * and that in no case shall non-resident proprietors be taxed higher than residents. * * *"

g. Oregon Personal Income Tax Act of 1953, ORS c 316:

"316.055 Imposition of tax. (1) A tax hereby is imposed upon every resident of the state upon and with respect to his entire net income, as defined in ORS 316.125, including his entire net income from sources both within and without the state.

(2) A like tax hereby is imposed upon every individual not a resident of this state upon and with respect to his entire net income, as defined in ORS 316.125, from all property located in the state, including interest, or any amount in lieu thereof, upon the deferred payments of the selling price received in connection with the sale of such property, and from every business, trade, profession or occupation carried on in the state, including income from money or credits and other intangible personal property used by such nonresident individual in the conduct of his business, trade, profession or occupation within the state."

"316.325. Net Income. 'Net Income' means the gross income of the taxpayer as defined in ORS 316.105 to 316.115, less the deductions allowed by ORS 316.305 to 316.370."

316.305 [Business expenses.]
316.306 [Employes' plan contributions.]
316.310 [Interest expense.]
316.315 [Taxes.]
316.320 [Business and non-business losses.]
316.325 [Loss from wash sales of securities.]
316.330 [Bad debt losses.]
316.335 [Depreciation and depletion.]
316.336 [Optional depreciation and depletion.]
316.337 [Soil and water conservation expenses.]
316.340 [Contributions and gifts.]
316.345 [Extraordinary medical expenses.]
316.350 [Bond premiums.]

"316.360. Deductions allowed nonresident taxpayers. (1) Subject to subsection (2) of this section, in the case of a nonresident taxpayer the deductions allowed by ORS 316.305 to 316.350 shall be allowed only if and to the extent that they are connected with:

(a) Income which arises from sources within the State of Oregon and which is taxed to a nonresident taxpayer under this chapter; or

(b) Property having a situs for taxation within the State of Oregon.

(2) The deduction prescribed in ORS 316.340, and as therein limited, shall be allowed to a nonresident taxpayer but only with respect to contributions or gifts within the tax year to the United States, the State of Oregon or any political subdivision thereof for use exclusively for public purposes within the State of Oregon, or to a corporation or association described in ORS 316.340, or a chapter or branch thereof, located within the State of Oregon."

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In the Supreme Court of the United States

OCTOBER TERM 1964

No. 229

NATHANIEL E. BERRY,

Plaintiff-Appellant,

v.

STATE TAX COMMISSION,

Defendant-Appellee.

On Appeal From the Supreme Court of the State of Oregon

MOTION TO DISMISS

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